

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
4:11-CV-184-FL

JAMES MCKINLEY JOHNSTON,

Plaintiff,

v.

CAROLYN PATTERSON, USDA,

Defendant.

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**ORDER and
MEMORANDUM AND
RECOMMENDATION**

This pro se case is before the court on the motion to proceed in forma pauperis under 28 U.S.C. § 1915(a)(2) (D.E. 1) by plaintiff James McKinley Johnston (“plaintiff”) and for a frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B). These matters were referred to the undersigned Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), respectively. The court finds that plaintiff has adequately demonstrated his inability to pre-pay the required court costs, and his motion is therefore ALLOWED. However, based on the court’s frivolity review, it will be recommended that this case be DISMISSED for the reasons stated below.

The claims that plaintiff seeks to bring against defendants Carolyn Patterson and the United States Department of Agriculture (“USDA”) are essentially identical to those he sought to bring in a prior case in this court, *James M. Johnston v. Carolyn Patterson: USDA and Shawn Spears - S and J of Raleigh*, No. 4:10-CV-176-FL (case opened 29 Nov. 2010).¹ The complaint in this prior action was dismissed against these defendants pursuant to a frivolity review on the

¹ The court notes that plaintiff has attempted to bring the same claims in two other cases in this court solely against defendant Shawn Spears, S and J of Raleigh. See *James M. Johnston v. Shawn Spears, S and J of Raleigh*, No. 4:10-CV-116-D (case opened 27 Aug. 2010); *James M. Johnston v. Shawn Spears, S and J of Raleigh*, No. 4:10-CV-139-FL (case opened 6 Oct. 2010). The complaints in each of these actions were dismissed pursuant to a frivolity review on the grounds of lack of subject matter jurisdiction. See 27 Sept. 2010 Order (D.E. 6) in No. 4:10-CV-116-D; 17 Dec. 2011 Order (D.E. 5) in No. 4:10-CV-139-FL.

grounds of lack of subject matter jurisdiction. (*See* 17 Aug. 2011 Order (D.E. 6) 1-2). For the reasons stated in that prior order, it will be recommended that the claims against these defendants be dismissed, again, for lack of subject matter jurisdiction.

For the foregoing reasons, it is RECOMMENDED that this action be DISMISSED.

The Clerk shall send copies of this Memorandum and Recommendation to plaintiff, who has 14 days, or such other time as the court directs, to file written objections. Failure to file timely written objections bars plaintiff from receiving a de novo review by the District Judge on an issue covered in the Memorandum and Recommendation and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Judge.

SO ORDERED, this the 9th day of February 2012.



James E. Gates
United States Magistrate Judge